

REPORT ON THE EXCHANGE AND SUMMARY

Instructions:

1. The report must be sent to the EJTN (exchanges@ejtn.eu) within one month after the exchange.
2. Please use the template below to write your report (recommended length: 4 pages).
3. Please write in English or French. Should this not be possible, the report can be written in another language but the summary must be in English or French.
4. Please read the guidelines for drafting the report (in Annex). Feel free to add any other relevant information in your report.
5. The summary shall contain a synthesis of the most important information of the report.
6. Please note that NO NAMES, neither yours nor the ones of the persons you met during your exchange, should appear in the report in order to ensure anonymity¹. Initials can be used when necessary.

Identification of the participant

Name: Stegemann

First name: Jan

Nationality: German

Country of exchange: Spain

Publication

For dissemination purposes and as information for future participants in the Programme please take note that, unless you indicate otherwise, EJTN may publish your report in its website. In this case the report will remain anonymous and your name and surname will not appear. To this aim, please do not mention any names in the reports. Initials can be used instead.

Please tick this box if you do not wish for your report to be published

For completion by EJTN staff only

Publication reference:

¹ To that purpose, the first page of this report will be taken out before any possible publication



Identification of the participant

Nationality: German

Functions: Judge

Length of service: 4 Years

Identification of the exchange

Hosting jurisdiction/institution: Spanish Judicial School

City: Barcelona

Country: Spain

Dates of the exchange: 06.10.2014 to 07.10.2014 (Date of arrival 05.10.2014)

Type of exchange:

one to one exchange

group exchange

general exchange

specialized exchange (please specify :)

REPORT

The group exchange in Barcelona was perfectly organised and gave a very diversified insight into the spanish judicial system. The first and the second day of the exchange took place at the Spanish Judicial School in Barcelona where judges are trained before and during their practising.

On the first day we received a very interesting overview about the spanish judicial system and about the selection of judges in Spain. We also had the opportunity to visit the whole Judicial School and to get to know more about how judges are trained in Spain.

During the second day we intensified our general overview about the spanish judicial system. Two senior judges came to the judicial school and gave us very interesting and good prepared overviews about the civil and the penal procedure in Spain. We were explained the structure of the courts and the different instances in civil and criminal matters. We were also explained, how decisions can be appealed and which are the courts of appeal and the supreme courts in Spain as well as in the autonomous region of Catalonia. After getting an overview about the judicial system in Spain every participant had the possibility to give a short presentation about the judicial system of his or her own country and to explain the main differences to the spanish system. This was a very interesting part of the exchange as it allowed not only to learn more about the spanish system but also to compare the similarities and the differences of other european judicial systems. In the afternoon a professor of the Spanish Judicial School gave us an overview about important regulations for judicial cooperation in Europe. This was very helpful as most of the ordinary



judges (as myself) were not familiar with most of the regulations and possibilities of judicial cooperation in Europe.

On Wednesday, the third day, we visited the criminal investigation court in the Ciudad de la Justicia in Barcelona. We were divided into three groups and each group was hosted by an investigation judge. The division in smaller groups allowed us to have a deeper communication with the hosting judge and was done at every court visit. Seeing the work of an investigation judge in Spain was very interesting as we don't have a comparable judge in Germany. In Germany as in most of the other European judicial systems criminal cases are investigated by prosecutors and not by a judge. We were shown a file of a pending investigation in a homicide case and were able to see, which decisions had to be done during the investigation. Afterwards we were able to visit a hearing of an investigation judge.

The next day we visited the penal courts and each group was again hosted by a judge. We attended different hearings and became a very good overview about the proceedings. During the day our hosting judge had to deal with a very big and complicated case of tax fraud and it was interesting to see that such cases are handled by a single judge and not by special judges or departments in the court.

On Friday we visited the Centre for Legal Studies and Specialised Training in Barcelona. We were explained about probation as an alternative measure to prison in Spain. As I am a criminal judge myself it was very interesting to hear, how probation is handled in Spain and to discuss the experiences. It was also interesting to get to know that the system of probation is a very new instrument for some European judicial systems. In the afternoon we had the possibility to visit the beautiful building of the Bar Association of Barcelona and to get to know more about the work and the organisation of lawyers in Spain.

During the second week we visited the Administrative Courts, the Family Courts and the Civil Courts. As during the court visits in the first week we were divided into smaller groups and hosted by a judge of each court who gave us a short overview about his or her work and daily routines. We were also able to visit different hearings and to discuss the proceedings with the judges.

On Tuesday we visited the penitentiary center BRIANS 1 outside of Barcelona. This was a very special and interesting visit as there are not many possibilities to visit a prison even in our home country. During our stay we also visited the secure unit for mentally ill prisoners as well as the special unit for drug addicted prisoners.

On our last day we were hosted in the city hall and were shown the most important and representative rooms. The city hall is a very special and beautiful building like a palace and it was great to have the possibility to visit it at the end of the exchange. Finally we visited the High Court of Justice of Catalonia which was also a highlight. We were shown the court room for the jury trials and one of the senior judges explained us the specialities and the procedure of a jury trial directly in the court room. As we don't have jury trials in Germany this was a very interesting experience before finishing the exchange on Friday afternoon.

The exchange was organised by the Spanish Judicial School which also hosted us for the first two days of the exchange. To become a judge after finishing university in Spain you have to pass a very complicated test and selection procedure to be accepted. Before going to the court every new judge has to stay at the Judicial School in Barcelona for one year. During this year the new judges receive a special training to be prepared for the special challenges of the job. For example, they attend court hearings via video links, do role playings or mock trials. The Judicial School is also responsible for the training during the judicial career. This is a very big difference to Germany as (unfortunately) we do not have a comparable institution. In Germany each federal state is responsible for recruiting and training new judges. After being accepted for becoming a judge there is no special training or school, which makes it very difficult to start with the job. In my opinion the Spanish Judicial School is a very important institution as having a consistent training and preparation helps to deal with difficult situations and cases.

One aspect of the judicial system in Spain that I was particularly interested in was the jury trial. In Spain, some special crimes like murder are tried before a jury. The jury is composed of nine members and one presiding judge. The evidence has to be brought to the jurors during oral hearings. At the end of the trial the jury has to decide about the defendant to be guilty or not guilty and also to give reasons for their decision. The decision of the jury is binding for the presiding judge, he cannot overrule the jury. In



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Germany we don't have jury trials. Special cases like murder are tried before the "Schwurgericht" which is a special chamber at the district courts, consisting of three judges and two lay judges.

Besides that main aspect there are more very interesting differences between the Spanish and the German judicial systems. In Germany, the local courts as the first instance in civil matters are competent only for a value of a claim up to 5.000 €. If the value of the claim exceeds 5.000 € it has to be filed directly at the district court. In contrast to this the competence of the ordinary civil court as the first instance in Spain is independent from the value of the claim. Even a claim with a value of more than 1 Million Euro is in the competence of a single judge of the ordinary civil court.

Another (very helpful) speciality of the Spanish judicial system is the possibility to have special oral proceedings in civil cases with a value less than 6.000 €. In oral proceedings only the claim is written and filed. The rest of the proceeding is done in an oral hearing. The advantages of these oral proceedings are that they are much faster and better to handle as the file is clear and not overloaded. The judgement has to be given within 10 days after the hearing.

Civil cases with a value less than 90 € can be handed by special peace courts, mainly in small regions without an own court. Peace judges are not professional judges.

Apart from these differences in the organisation of the courts and in the procedural law, the substantive law in Spain and Germany is very comparable.

During the exchange we also had the opportunity to get to know some instruments of judicial cooperation in Europe. At the investigation court we were explained how a European warrant works and how an extradition application would be handled. On the second day of the exchange we also had a presentation about some important European regulations about judicial cooperation. The most interesting regulation that I did not know before was regulation 861/2007 about establishing a European small claims procedure. This special procedure allows the plaintiff to file his claim against a citizen of another state of the European Union in his own country if the value of the claim is less than 2.000 €. The claim can be filed with a form sheet. The advantages of this special procedure are that it is relatively fast and cheap and that the decision of the court can directly be enforced in other states of the European Union.

Finally I can say that the exchange was very interesting and provided a lot of benefits also for my own judicial practice. The exchange provided the perfect opportunity to discuss and to learn about another legal system in Europe. Comparing the judicial system of the host country with the own judicial system is a very helpful way to question the own regulations and way of working. This comparison helps to see that there are also a lot of possibilities to improve the own methods and procedures. Comparing and discussing the different legal systems in a group of judges from all around Europe is very interesting and helpful to understand the differences of the judicial systems and also the reasons for them. It leads to a better understanding and encourages to more cooperation and a continuous exchange of experience and information.



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SUMMARY

The exchange in Spain was perfectly organised and very diversified and informative. During the first days in the Spanish Judicial School we got a very good structured overview about the Spanish judicial system. Based on this knowledge we visited all kinds of courts in Barcelona and had the opportunity to attend hearings and to discuss the proceedings with the judge. Furthermore we did special visits to the penitentiary center of Barcelona, to the High Court of Justice of Catalonia and to the city hall. After two weeks I gained a very profound insight into the organisation and the main aspects of the Spanish judicial system. The exchange was very well prepared by the Spanish Judicial School and our Tutors, who accompanied and assisted us all the time. It was a pleasure to meet them and the other participants of the program and I hope we will stay in contact in the future. I would definitely recommend to take part in a group exchange as you will meet judges from all around Europe. This allows you not only to gain an insight into the judicial system of the host country, but also to discuss these impressions in the group and compare them to the judicial systems of the other participants. In my opinion these exchange programs will help to enhance the cooperation in judicial matters within Europe and are therefore very important.



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ANNEX

GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met...

The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.

If you have received a programme from the hosting institution, please provide a copy.

II- The hosting institution

Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning...

III- The law of the host country

With regard to the activities you took part in during the exchange, please develop one aspect of the host country's national law that you were particularly interested in.

IV- The comparative law aspect in your exchange

What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law..? Please develop.

V- The European aspect of your exchange

Did you have the opportunity to observe the implementation or references to Community instruments, the European Convention of Human Rights, judicial cooperation instruments? Please develop.

VI- The benefits of the exchange

What were the benefits of your exchange? How can these benefits be useful in your judicial practice? Do you think your colleagues could benefit of the knowledge you acquired during your exchange? How?

VII- Suggestions

In your opinion, what aspects of the Exchange Programme could be improved? How?

